

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DONALD A. BOULDEN,

Petitioner,

v.

CIV 09-0770 BB/KBM

JAMES JANECKA, Warden, et al.,

Respondents.

ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION

This is a § 2254 habeas proceeding. In her proposed findings entered November 24, 2009, the Magistrate Judge found that the petition is “mixed,” that a stay pending exhaustion would be unwarranted, and advised Petitioner that if he elected to proceed with the unexhausted claims, the federal proceedings would be dismissed. See *Doc. 14*.

Petitioner filed two items in response. I have carefully reviewed his “objections” to the proposed findings *de novo* and find them without merit. Although they reassert where he did raise the unexhausted claims, they do not establish that the claims are exhausted or that a stay would be appropriate. See

Doc. 15, see also, e.g., Garcia v. City of Albuquerque, 232 F.3d 760, 766-67 (10th Cir. 2000). Petitioner also filed a certificate reasserting where the four unexhausted claims were presented, but also indicating that he elects to delete them and desires to continue with this federal suit. *See Doc. 16* at 2.

Wherefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Petitioner's objections (*Doc. 15, and to the extent reiterated in Doc. 16*) are OVERRULED;
2. The Magistrate Judge's Proposed Findings and Recommended Disposition (*Doc. 14*) is ADOPTED except for the proposed scheduling order, which I have changed below;
3. Petitioner's request for discovery and to expand the record (*Doc. 3*) is GRANTED IN PART; and
4. Due to the impending holidays, by Friday, January 29, 2010, Respondents expand the federal record to include copies of: all state documents that constitute the "Record Proper;" the tape log; transcripts (preferably) or tapes of all state court criminal and post-conviction proceedings; and all other relevant documentary evidences.



UNITED STATES DISTRICT JUDGE